

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN KEITH BALES**, on February 24, 2003 at 3 P.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Keith Bales, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Walter McNutt (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Mike Taylor (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Corey Stapleton (R)

Members Absent: None.

Staff Present: Jennifer Stephens, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 440, 2/17/2003
Executive Action: SB 375, SB 381

HEARING ON SB 440

Sponsor: SEN. EDWARD BUTCHER, SD 47, WINIFRED

Proponents: Dan Dutton, Belfry
Brooks Dailey, MT Farmers Union
Chris Christiaens, MT Farmers Union
Jim Barngrover, Alternative Energy Resources
Organization, (AERO)

Opponents: Lochiel Edwards, MT Grain Growers
Pam Langley, MT Seed Trade Association, MT
Agricultural Business Association
Nancy Schlepp, MT Farm Bureau

Opening Statement by Sponsor:

SEN. EDWARD BUTCHER, SD 47, WINIFRED, explained that the farmers in Montana are facing an increasing loss of control of their business. There is an increasing decline of competition in agricultural markets. He said he has serious concerns with the direction of the food industry. The international conglomerates are continuing to grow. He also added that wheat has never been a very successful hybrid candidate. But, he said, genetic modification technologies have changed the playing field dramatically with the new corporate ability to legislate heavy fines to control not only the contracting entities themselves, but also the neighboring, non-participating farms. Monsanto has gone to court and threatened actions in other states against contract farmers as well as adjacent farmers for violating patent rights. SEN. BUTCHER explained if genetically modified wheat comes in contact with non-genetically modified wheat, the contractor can levee extensive penalties against an innocent party. That is why he is in strong support of SB 440. He said that the bill is an educational bill that lays the groundwork for those involved in agriculture. The bill would provide that all genetically modified wheat seeds sold or distributed in Montana must be accompanied by instructions regarding the planting, growing, and harvesting of the seed. With these instructions, it will be very clear how genetically modified wheat is to be utilized. It also gives the Montana Department of Agriculture the right to establish the necessary rules to implement the instructions required for raising genetically modified wheat. It provides that the grower that follows all directions provided with the wheat seed is not liable for damages. Passing the bill would help establish rules for something that is entirely new to Montana agriculture. With genetically modified wheat introduction targeted for 2005, he stressed that the bill needed

to be implemented now. If producers plan to plant genetically modified wheat, management decisions need to be made very quickly, including buffer zones to separate genetically modified wheat from non-genetically modified wheat. **SEN. BUTCHER** ended by offering to answer any questions.

Proponents' Testimony:

Dan Dutton, Belfry, submitted written testimony, **EXHIBIT** (ags41a01).

Brooks Dailey, MT Farmers Union, said a precedent would be set by passing SB 440. He explained that the state of Maine has passed legislation similar to that proposed in SB 440. **Mr. Dailey** said that SB 440 was drafted using the same language. He added that the bill would protect both farmers and corporations by providing a strict set of guidelines. He used the example of how srpaying practices are regulated. He finished by emphasizing that SB 440 is a gentle bill that protects all Montanans.

Chris Christiaens, MT Farmers Union, rose to speak about the fiscal note. He said the \$53,000 for the implementation of the bill would come from a special state revenue account. He added that the fund would be replenished with money from fines. Also, the companies planning to plant genetically modified wheat by 2005 would have to pay a number of fees. **Mr. Christiaens** said these fees could cost up to \$53,000 per company. He thinks the estimate might be a little high, but the MT Department of Agriculture feels that the figure is accurate. He said that if the bill was delayed by 6 months, money could be saved. He ended by stressing the importance of passing state legislation so the state doesn't have to worry about the federal government coming in and telling us what to do.

Jim Barngrover, AERO, submitted written testimony, **EXHIBIT** (ags41a02).

Opponents' Testimony:

Lochiel Edwards, MT Grain Growers, submitted written testimony, **EXHIBIT** (ags41a03).

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Pam Langley, MT Seed Trade Association, MT Agricultural Business Association, emphasized that there is no trans-genetic wheat on the market as of this time and any genetically modified seeds that do come on the market will have the EPA's and the FDA's

approval. She also added that Monsanto's genetically modified wheat strains will not be released into the market until they are ready. Furthermore, the wheat will not be released until there is consumer acceptance. **Ms. Langley** pointed out more flaws in the bill and also submitted handouts for the committee, **EXHIBIT(ags41a04)** as well as the written testimony of **Dan Biggerstaff, Western Plant Breeders, EXHIBIT(ags41a05)**, and **Mike DeVries, Montana Seed Trade Association, EXHIBIT(ags41a06)**.

Nancy Schlepp, MT Farm Bureau, thanked Sen. Butcher for sponsoring SB 440 because it does address an important issue, however, she does not believe that introducing genetically modified wheat will create monopolies. On the contrary, she believes that SB 440 only creates a barrier to the open market. She stressed that the debate about genetically modified wheat is a federal issue and Montana shouldn't isolate themselves by passing restrictive legislation. She also said that there are discrepancies in previous testimony concerning how wheat is germinated. She explained that wheat is a self-pollinating plant that takes care of itself; therefore, there is no worry of cross pollination.

Informational Witnesses:

Ralph Peck, Director, MT Department of Agriculture, said he was available to answer any questions. He also asked that if the bill is passed that the liability to the state's department of agriculture be limited. He also explained if the bill is passed, the MT Department of Agriculture would need appropriation authority in order to proceed with the functions of the bill.

Questions from Committee Members and Responses:

SEN. MIKE TAYLOR asked **Doug Sternberg** about the constitutionality of the bill. **Mr. Sternberg** said there is certainly an issue in regard to how the bill affects federal supremacy. He said that certain federal requirements would have to be met in order for SB 440 to be adopted. He also thinks there might be some issues with how the bill might affect interstate commerce.

Closing by Sponsor:

SEN. EDWARD BUTCHER reemphasized that all the bill would do is set up boundaries and rules regarding genetically modified wheat. He said that if there are constitutionality implications, they will be resolved when the time comes. Lastly, he announced that the bill will not restrict genetically modified wheat farming in Montana; it just sets up some guidelines to protect both the farmer and the seed producer.

EXECUTIVE ACTION ON SB 375

Motion: SEN. TAYLOR moved SB 375 .

Motion: SEN. TAYLOR moved that SB 375 BE AMENDED.

Discussion:

SEN. MIKE TAYLOR said his proposed amendment would limit how baled tires could be used. He passed the amendment out to other members of the committee, **EXHIBIT(ags41a07)**.

Mr. Sternberg explained that the retroactivity application in section 4 would seek to apply the restrictions retroactively to the beginning of 2002. He added there were people who entered into agreements to use waste tire bales and spent money to do so. When they did this, baled tire use was not restricted. Retroactive applicability to the law to people who conducted business or acted in a lawful manner is probably not appropriate, he said. Because Mr. Sternberg said the bill cannot have retroactive application, he amended section 3 to allow those who acted in a lawful manner prior to the restriction to retain their right to own baled tires.

SEN. DALE MAHLUM asked SEN. TAYLOR if the adoption of the bill would mean that an old wall of baled tires would not have to be removed. SEN. TAYLOR said yes because it would have been erected when it was legal to do so.

Motion/Vote: SEN. MAHLUM moved that SB 375 BE AMENDED. Motion carried unanimously.

SEN. MIKE TAYLOR said there might need to be some clarification concerning if baled tires can be used underwater. He asked the committee if they would like to draft an amendment that would specify when the baled tires could be used underwater.

SEN. KEITH BALES asked Mr. Sternberg if SEN. TAYLOR'S amendment would change the bill too much. Mr. Sternberg said no; the restrictions in the bill could be changed.

SEN. DALE MAHLUM said he liked SEN. TAYLOR'S proposed amendment because he has seen where tires can be useful in preventing erosion.

SEN. KEN HANSEN reminded the committee that there might be a problem with the bales of tires breaking.

SEN. WALTER MCNUTT emphasized that the DNRC would also have to have a say in how tire bales could be used under water.

Mr. Sternberg said he thought that the DNRC could come up with some rules and regulations. He urged the committee to put something in the bill that would call for the DNRC to create some rules regarding how baled tires could be used underwater.

SEN. TAYLOR explained that when bank restoration is done on a streambed, a 3-10 permit is required. Furthermore, the 3-10 permit gives details concerning how the restoration can be done.

SEN. MCNUTT suggested an amendment that would require underwater baled tire use to be regulated by the DNRC.

Mike Crowley, Attorney, rose and said the proposed amendment was good in the sense that it does not ban baled tires outright, but he pointed out that the 3-10 permits would not encompass all of the ways that baled tires might be used underwater. He ended by saying that the DNRC might not be able to be the authority on all baled tire usages.

SEN. MCNUTT asked **Mr. Crowley** how the amendment should be worded. **Mr. Crowley** said that the language **SEN. TAYLOR** suggested earlier seemed more appropriate.

SEN. MCNUTT withdrew his conceptual amendment.

Motion: **SEN. MAHLUM** moved **SEN. TAYLOR'S** conceptual amendment.

Motion/Vote: **SEN. TAYLOR** moved that SB 375 BE AMENDED. Motion carried unanimously.

Motion/Vote: **SEN. TAYLOR** moved that SB 375 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON SB 381

Motion: **SEN. BALES** moved that SB 381 DO PASS.

Discussion:

SEN. TAYLOR said he was going to vote for the bill and encouraged the committee to do the same.

Motion/Vote: **SEN. MAHLUM** moved that SB 381 DO PASS. Motion carried unanimously.

EXECUTIVE ACTION ON SB 440

Motion: SEN. TAYLOR moved that SB 440 DO PASS.

Discussion:

SEN. MCNUTT said that according to his understanding of the bill, the person who is impacted by cross contamination has no recourse. He explained that under present law, a person could go to civil court to get compensation for cross contamination. He said he is concerned that passing SB 440 would hurt the very people the bill is trying to protect.

Mr. Sternberg explained if liability was precluded for the grower and the manufacturer had met their legal constraints in providing a safe product, and cross contamination did occur, the state might be the last recourse for compensation.

SEN. MIKE TAYLOR said he thinks **SEN. MCNUTT** made a valid point, but he still finds a necessity for the bill. He also noted that the bill is a revenue generation bill, therefore it can be postponed past transmittal.

SEN. TAYLOR asked if the bill could be postponed until after transmittal break.

SEN. BALES said if the bill were postponed, it would need to be re-referred to Senate Finance and Claims.

SEN. TAYLOR said that would be fine.

SEN. BALES asked **SEN. TAYLOR** if there is any way to resolve any of the problems that he sees in the bill. **SEN. TAYLOR** said he was concerned with sections 2 and 3 of the bill. He supports the purpose of the bill; he just thinks it needs some revision.

SEN. LINDA NELSON asked if the committee would be meeting again before transmittal. **SEN. BALES** said no.

SEN. MCNUTT said the bill had flaws in several places. He added that the committee had already set a precedent by passing SJ 8.

SEN. MAHLUM asked **Ralph Peck, Director, MT Department of Agriculture**, if the Department of Agriculture is ready for the bill. **Mr. Peck** said that the impacts of the bill would be new to the department.

SEN. TAYLOR made a substitute motion to refer SB 440 to the Senate Committee of Finance and Claims.

SEN. NELSON asked **SEN. TAYLOR** if he would be working with the sponsor of the bill to make it more acceptable. **SEN. TAYLOR** said he did not know. He would just like an opportunity to work with the bill.

SEN. BALES said that changing the liability in the bill would go against some of the things the sponsor wanted. He said he would probably vote against **SEN. TAYLOR'S** motion to refer the bill to Finance and Claims because he thinks the bill is too flawed.

Substitute Motion/Vote: **SEN. TAYLOR** made a substitute motion to have SB 440 referred to Senate Finance and Claims. Substitute motion failed 2-8. **STAPLETON** voted no by proxy.

Motion/Vote: **SEN. MCNUTT** moved that SB 440 BE INDEFINITELY POSTPONED. Motion carried 8-2. **STAPLETON** voted aye by proxy.

ADJOURNMENT

Adjournment: 5 P.M.

SEN. KEITH BALES, Chairman

JENNIFER STEPHENS, Secretary

KB/JS

EXHIBIT (ags41aad)